

communication is not mandatory. Although the enforcement State is required by the PKPA to enforce according to its terms a custody determination made consistently with the PKPA, that duty is subject to the decree being modified by a State with the power to do so under the PKPA. An order to enjoin the parties from enforcing the decree is the equivalent of a temporary modification by a State with the authority to do so. The concomitant provision addressed to the enforcement court is Section 306 of this Act. That section requires the enforcement court to communicate with the modification court in order to determine what action the modification court wishes the enforcement court to take.

The term "pending" that was utilized in the UCCJA section on simultaneous proceeding has been replaced. It has caused considerable confusion in the case law. It has been replaced with the term "commencement of the proceeding" as more accurately reflecting the policy behind this section. The latter term is defined in Section 102(5).

822.27
SECTION 207. INCONVENIENT FORUM. *no caps* *no 91*

1
(B) { (a) A court of this State *that* which has jurisdiction under this *chapter* [Act] to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

2
(B) { (b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including: *all of the following*

a
(1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child *(1)*

^b
(2) the length of time the child has resided outside this State;
^c
(3) the distance between the court in this State and the court in the State
that would assume jurisdiction;

^d
(4) the relative financial circumstances of the parties;
^e
(5) any agreement of the parties as to which State should assume
jurisdiction;

^f
(6) the nature and location of the evidence required to resolve the
pending litigation, including testimony of the child;

^g
(7) the ability of the court of each State to decide the issue expeditiously
and the procedures necessary to present the evidence; and

^h
(8) the familiarity of the court of each State with the facts and issues in
the pending litigation.

³
(B) { (c) If a court of this State determines that it is an inconvenient forum and
that a court of another State is a more appropriate forum, ^{the court} it shall stay the
proceedings upon condition that a child custody proceeding be promptly
commenced in another designated State and may impose any other condition the
court considers just and proper.

⁴
(B) { (d) A court of this State may decline to exercise its jurisdiction under this
[Act] ^{chapter} if a child custody determination is incidental to an action for divorce or
another proceeding while still retaining jurisdiction over the divorce or other
proceeding.

Comment

This section retains the focus of Section 7 of the UCCJA. It authorizes courts to decide that another State is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties. If so, the court may defer to the other State.

The list of factors that the court may consider has been updated from the UCCJA. The list is not meant to be exclusive. Several provisions require comment. Subparagraph (1) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties. For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. If domestic violence or child abuse has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse.

In applying subparagraph (3), courts should realize that distance concerns can be alleviated by applying the communication and cooperation provisions of Sections 111 and 112.

In applying subsection (7) on expeditious resolution of the controversy, the court could consider the different procedural and evidentiary laws of the two States, as well as the flexibility of the court dockets. It also should consider the ability of a court to arrive at a solution to all the legal issues surrounding the family. If one State has jurisdiction to decide both the custody and support issues, it would be desirable to determine that State to be the most convenient forum. The same is true when children of the same family live in different States. It would be inappropriate to require parents to have custody proceedings in several States when one State could resolve the custody of all the children.

Before determining whether to decline or retain jurisdiction, the court of this State may communicate, in accordance with Section 110, with a court of another State and exchange information pertinent to the assumption of jurisdiction by either court.

There are two departures from Section 7 of the UCCJA. First, the court may not simply dismiss the action. To do so would leave the case in limbo. Rather the court shall stay the case and direct the parties to file in the State that has been found to be the more convenient forum. The court is also authorized to impose any other conditions it considers appropriate. This might include the issuance of temporary custody orders during the time necessary to commence a proceeding in the designated State, dismissing the case if the custody proceeding is not commenced in the other State or resuming jurisdiction if a court of the other State refuses to take the case.

Second, UCCJA, § 7(g) which allowed the court to assess fees and costs if it was a clearly inappropriate court, has been eliminated. If a court has jurisdiction under this Act, it could not be a clearly inappropriate court.

822.28
SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT. *no caps*
no (H)

§ 822.24
(B) (a) Except as otherwise provided in Section 204 [or by other law of this State], if a court of this State has jurisdiction under this [Act] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless: *one of the following occurs*

a
(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction; *no*

b
(2) a court of the State otherwise having jurisdiction under Sections 201 through 203 determines that this State is a more appropriate forum under Section 207; *ss. 822.21 to 822.23*
no

c
(3) no court of any other State would have jurisdiction under the criteria specified in Sections 201 through 203. *ss. 822.21 to 822.23*

(B) (b) If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203. *under*
ss. 822.21 to 822.23

3
(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction ^{under} pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this [Act]. ^{chapter}

Comment

The "Clean Hands" section of the UCCJA has been truncated in this Act. Since there is no longer a multiplicity of jurisdictions which could take cognizance of a child-custody proceeding, there is less of a concern that one parent will take the child to another jurisdiction in an attempt to find a more favorable forum. Most of the jurisdictional problems generated by abducting parents should be solved by the prioritization of home State in Section 201; the exclusive, continuing jurisdiction provisions of Section 202; and the ban on modification in Section 203. For example, if a parent takes the child from the home State and seeks an original custody determination elsewhere, the stay-at-home parent has six months to file a custody petition under the extended home state jurisdictional provision of Section 201, which will ensure that the case is retained in the home State. If a petitioner for a modification determination takes the child from the State that issued the original custody determination, another State cannot assume jurisdiction as long as the first State exercises exclusive, continuing jurisdiction.

Nonetheless, there are still a number of cases where parents, or their surrogates, act in a reprehensible manner, such as removing, secreting, retaining, or restraining the child. This section ensures that abducting parents will not receive an advantage for their unjustifiable conduct. If the conduct that creates the jurisdiction is unjustified, courts must decline to exercise jurisdiction that is inappropriately invoked by one of the parties. For example, if one parent abducts the child pre-decree and establishes a new home State, that jurisdiction will decline to hear the case. There are exceptions. If the other party has acquiesced in the court's jurisdiction, the court may hear the case. Such acquiescence may occur by filing a pleading submitting to the jurisdiction, or by not filing in the court that would otherwise have jurisdiction under this Act. Similarly, if the court that would have

jurisdiction finds that the court of this State is a more appropriate forum, the court may hear the case.

This section applies to those situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it. If, for example, a parent in the State with exclusive, continuing jurisdiction under Section 202 has either restrained the child from visiting with the other parent, or has retained the child after visitation, and seeks to modify the decree, this section is inapplicable. The conduct of restraining or retaining the child did not create jurisdiction. Jurisdiction existed under this Act without regard to the parent's conduct. Whether a court should decline to hear the parent's request to modify is a matter of local law.

The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A technical illegality or wrong is insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another State to establish jurisdiction has engaged in unjustifiable conduct and the new State must decline to exercise jurisdiction under this section.

Subsection (b) authorizes the court to fashion an appropriate remedy for the safety of the child and to prevent a repetition of the unjustified conduct. Thus, it would be appropriate for the court to notify the other parent and to provide for foster care for the child until the child is returned to the other parent. The court could also stay the proceeding and require that a custody proceeding be instituted in another State that would have jurisdiction under this Act. It should be noted that the court is not making a forum non conveniens analysis in this section. If the conduct is unjustifiable, it must decline jurisdiction. It may, however, retain jurisdiction until a custody proceeding is commenced in the appropriate tribunal if such retention is necessary to prevent a repetition of the wrongful conduct or to ensure the safety of the child.

The attorney's fee standard for this section is patterned after the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). The assessed costs and fees are to be paid to the respondent who established that jurisdiction was based on unjustifiable conduct.

822.29
SECTION 209. INFORMATION TO BE SUBMITTED TO COURT. 1091

(B) (a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last ⁵ years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

^a
(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any.

^b
(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding, and

^c
(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

2
② { (b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

3
② { (c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

4
② { (d) Each party has a continuing duty to inform the court of any proceeding in this or any other State that could affect the current proceeding.

5
② { [(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]

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Comment

The pleading requirements from Section 9 of the UCCJA are generally carried over into this Act. However, the information is made subject to local law on the protection of names and other identifying information in certain cases. A number of States have enacted laws relating to the protection of victims in domestic violence and child abuse cases which provide for the confidentiality of victims names, addresses, and other information. These procedures must be followed if the child-custody proceeding of the State requires their applicability. See, e.g., California Family Law Code § 3409(a). If a State does not have local law that provides for protecting names and addresses, then subsection (e) or a similar provision should be adopted. Subsection (e) is based on the National Council of

Juvenile and Family Court Judge's, Model Code on Domestic and Family Violence § 304(c). There are other models to choose from, in particular UIFSA § 312.

In subsection (a)(2), the term "proceedings" should be read broadly to include more than custody proceedings. Thus, if one parent was being criminally prosecuted for child abuse or custodial interference, those proceedings should be disclosed. If the child is subject to the Interstate Compact on the Placement of Children, facts relating to compliance with the Compact should be disclosed in the pleading or affidavit.

Subsection (b) has been added. It authorizes the court to stay the proceeding until the information required in subsection (a) has been disclosed, although failure to provide the information does not deprive the court of jurisdiction to hear the case. This follows the majority of jurisdictions which held that failure to comply with the pleading requirements of the UCCJA did not deprive the court of jurisdiction to make a custody determination.

922.295 no caps
SECTION 210. APPEARANCE OF PARTIES AND CHILD. (no 91)

(B) (a) In a child custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

(B) (b) If a party to a child custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to

under s. 822.18
Section 108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(B) (c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

4
③ (d) If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Comment

End of insert
2-28

No major changes have been made to this section which was Section 11 of the UCCJA. Language was added to subsection (a) to authorize the court to require a non-party who has physical custody of the child to produce the child.

Subsection (c) authorizes the court to enter orders providing for the safety of the child and the person ordered to appear with the child. If safety is a major concern, the court, as an alternative to ordering a party to appear with the child, could order and arrange for the party's testimony to be taken in another State under Section 111. This alternative might be important when there are safety concerns regarding requiring victims of domestic violence or child abuse to travel to the jurisdiction where the abuser resides.

INSERT 2-22

[ARTICLE] 3
ENFORCEMENT

822.31

SECTION 301. DEFINITIONS. In this *subchapter* ~~[article]~~:

(B) (1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(D) (2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

Comment

For purposes of this article, "petitioner" and "respondent" are defined. The definitions clarify certain aspects of the notice and hearing sections.

822.32

SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION. *no caps* *(n 9)*

subchapter Under this ~~[article]~~ a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

Comment

This section applies the enforcement remedies provided by this article to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

822.33 no caps no 91

SECTION 303. DUTY TO ENFORCE.

- (a) A court of this State shall recognize and enforce a child custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act].
- (b) A court of this State may utilize any remedy available under other law of this State to enforce a child custody determination made by a court of another State. The remedies provided in this [article] are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

Comment

This section is based on Section 13 of the UCCJA which contained the basic duty to enforce. The language of the original section has been retained and the duty to enforce is generally the same.

Enforcement of custody determinations of issuing States is also required by federal law in the PKPA, 28 U.S.C. § 1738A(a). The changes made in Article 2 of this Act now make a State's duty to enforce and not modify a child custody determination of another State consistent with the enforcement and nonmodification provisions of the PKPA. Therefore custody determinations made by a State pursuant to the UCCJA that would be enforceable under the PKPA will generally be enforced under this Act. However, if a State custody determination made pursuant to the UCCJA would not be enforceable under the PKPA, it will also not be enforceable under this Act. Thus a custody determination made by a "significant connection" jurisdiction when there is a home State is not enforceable under the PKPA regardless of whether a proceeding was ever commenced in the home State. Even though such a determination would be enforceable under the UCCJA with its four concurrent bases of jurisdiction, it would not be enforceable under this Act. This carries out the policy of the PKPA of strongly discouraging a State from exercising its concurrent "significant connection" jurisdiction under the UCCJA when another State could exercise "home state" jurisdiction.

This section also incorporates the concept of Section 15 of the UCCJA to the effect that a custody determination of another State will be enforced in the same manner as a custody determination made by a court of this State. Whatever remedies are available to enforce a local determination can be utilized to enforce a custody determination of another State. However, it remains a custody determination of the State that issued it. A child-custody determination of another State is not subject to modification unless the State would have jurisdiction to modify the determination under Article 2.

The remedies provided by this article for the enforcement of a custody determination will normally be used. This article does not detract from other remedies available under other local law. There is often a need for a number of remedies to ensure that a child-custody determination is obeyed. If other remedies would easily facilitate enforcement, they are still available. The petitioner, for example, can still cite the respondent for contempt of court or file a tort claim for intentional interference with custodial relations if those remedies are available under local law.

822.34
SECTION 304. TEMPORARY VISITATION. no corp no 91

(B) (a) A court of this State which does not have jurisdiction to modify a child's custody determination, may issue a temporary order enforcing: any of the following

- (1) a visitation schedule made by a court of another State or
- (2) the visitation provisions of a child's custody determination of another State that does not provide for a specific visitation schedule.

(B) (b) If a court of this State makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in [Article] 2. The order remains in effect until an order is obtained from the other court or the period expires.

Comment

This section authorizes a court to issue a temporary order if it is necessary to enforce visitation rights without violating the rules on nonmodification contained in Section 303. Therefore, if there is a visitation schedule provided in the custody determination that was made in accordance with Article 2, a court can issue an order under this section implementing the schedule. An implementing order may include make-up or substitute visitation.

A court may also issue a temporary order providing for visitation if visitation was authorized in the custody determination, but no specific schedule was included in the custody determination. Such an order could include a substitution of a specific visitation schedule for "reasonable and seasonable."

However, a court may not, under subsection (a)(2) provide for a permanent change in visitation. Therefore, requests for a permanent change in the visitation schedule must be addressed to the court with exclusive, continuing jurisdiction under Section 202 or modification jurisdiction under Section 203. As under Section 204, subsection (b) of this section requires that the temporary visitation order stay in effect only long enough to allow the person who obtained the order to obtain a permanent modification in the State with appropriate jurisdiction under Article 2.

SECTION 305. REGISTRATION OF CHILD CUSTODY DETERMINATION.

(a) A child custody determination issued by a court of another State may be registered in this State, with or without a simultaneous request for enforcement, by sending to [the appropriate court] in this State:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought

to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

S. 822.29

(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(B) { (b) On receipt of the documents required by subsection (a), the registering court shall: ^{all of} do the following

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(B) { (c) The notice required by subsection (b)(2) must state that: ^{shall} ^{all of the following}

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(B) { (d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the

court shall confirm the registered order unless the person contesting registration establishes that:

one of the following
a
(1) the issuing court did not have jurisdiction under *subch. II* ~~Article~~ 2; *⊙*

b
(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under *subch. II* ~~Article~~ *⊙*

2; or

c
(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of *S. 822.18* ~~Section 108~~, in the proceedings before the court that issued the order for which registration is sought.

⊙ *5* (e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

⊙ *6* (f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Comment

This remainder of this article provides enforcement mechanisms for interstate child custody determinations.

This section authorizes a simple registration procedure that can be used to predetermine the enforceability of a custody determination. It parallels the process in UIFSA for the registration of child support orders. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA.

A custody determination can be registered without any accompanying request for enforcement. This may be of significant assistance in international cases. For example, the custodial parent under a foreign custody order can receive an advance determination of whether that order would be recognized and enforced

before sending the child to the United States for visitation. Article 26 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 35 I.L.M. 1391 (1996), requires those States which accede to the Convention to provide such a procedure.

822.36 no caps

SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION. no 91

B § 1 (a) A court of this State may grant any relief normally available under the law of this State to enforce a registered child custody determination made by a court of another State.

B § 2 (b) A court of this State shall recognize and enforce, but may not modify, except in accordance with ^{subch. II,} [Article] 2, a registered child custody determination of a court of another State.

Comment

A registered child-custody determination can be enforced as if it was a child-custody determination of this State. However, it remains a custody determination of the State that issued it. A registered custody order is not subject to modification unless the State would have jurisdiction to modify the order under Article 2.

822.37 no caps

SECTION 307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this ^{subchapter} [article] is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another State having jurisdiction to modify the determination under ^{subch. II} [Article] 2, the enforcing court shall immediately communicate with the modifying court. The

proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Comment

The pleading rules of Section 308, require the parties to disclose any pending proceedings. Normally, an enforcement proceeding will take precedence over a modification action since the PKPA requires enforcement of child custody determinations made in accordance with its terms. However, the enforcement court must communicate with the modification court in order to avoid duplicative litigation. The courts might decide that the court with jurisdiction under Article 2 shall continue with the modification action and stay the enforcement proceeding. Or they might decide that the enforcement proceeding shall go forward. The ultimate decision rests with the court having exclusive, continuing jurisdiction under Section 202, or if there is no State with exclusive, continuing jurisdiction, then the decision rests with the State that would have jurisdiction to modify under Section 203. Therefore, if that court determines that the enforcement proceeding should be stayed or dismissed, the enforcement court should stay or dismiss the proceeding. If the enforcement court does not do so, the court with exclusive, continuing jurisdiction under Section 202, or with modification jurisdiction under Section 203, could enjoin the parties from continuing with the enforcement proceeding.

822.38

no caps

SECTION 308. EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION.

no 9

1

(a) A petition under this [article] must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

2

(b) A petition for enforcement of a child custody determination must state:

all of the following

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was.

^b
(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this [Act] and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

^d
(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from [law enforcement officials] and, if so, the relief sought; and

(6) if the child custody determination has been registered and confirmed under Section 305, the date and place of registration.

³
(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing ^{shall} must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

⁴ (d) An order issued under subsection (c) ³ shall must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under ^{S. 822.42} Section 312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes ^{one of the following} that:

(1) the child custody determination has not been registered and confirmed under ^{S. 822.35} Section 305 and that:

^{1.} (A) the issuing court did not have jurisdiction under ^{subch. II} [Article] 2;

^{2.} (B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or ^{subch. II}

^{3.} (C) the respondent was entitled to notice, but notice was not given in accordance with the standards of ^{S. 822.18} Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or

^b (2) the child custody determination for which enforcement is sought was registered and confirmed under ^{S. 822.34} Section 304, but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under ^{subch. II} [Article] 2.

Comment

This section provides the normal remedy that will be used in interstate cases: the production of the child in a summary, remedial process based on habeas corpus.

The petition is intended to provide the court with as much information as possible. Attaching certified copies of all orders sought to be enforced allows the

court to have the necessary information. Most of the information relates to the permissible scope of the court's inquiry. The petitioner has the responsibility to inform the court of all proceedings that would affect the current enforcement action.

Specific mention is made of certain proceedings to ensure that they are disclosed. A "procedure relating to domestic violence" includes not only protective order proceedings but also criminal prosecutions for child abuse or domestic violence.

The order requires the respondent to appear at a hearing on the next judicial day. The term "next judicial day" in this section means the next day when a judge is at the courthouse. At the hearing, the court will order the child to be delivered to the petitioner unless the respondent is prepared to assert that the issuing State lacked jurisdiction, that notice was not given in accordance with Section 108, or that the order sought to be enforced has been vacated, modified, or stayed by a court with jurisdiction to do so under Article 2. The court is also to order payment of the fees and expenses set out in Section 312. The court may set another hearing to determine whether additional relief available under this state's law should be granted.

If the order has been registered and confirmed in accordance with Section 304, the only defense to enforcement is that the order has been vacated, stayed or modified since the registration proceeding by a court with jurisdiction to do so under Article 2.

822.39
SECTION 309. SERVICE OF PETITION AND ORDER. Except as

otherwise provided in Section 311, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.

no caps
s. 822.41
LPS-type brackets

Comment

In keeping with other sections of this Act, the question of how the petition and order should be served is left to local law.

822.40
SECTION 310. HEARING AND ORDER.

B { (a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical

no caps
no A
under s. 822.27

custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child custody determination has not been registered and confirmed under Section 305 and that:

1. (A) the issuing court did not have jurisdiction under [Article] 2;
(B) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2; or

3. (C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought;

(2) the child custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2.

(b) The court shall award the fees, costs, and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of

[law enforcement officials], and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

③ ⁴ (d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this [article] ^{subchapter}

Comment

The scope of inquiry for the enforcing court is quite limited. Federal law requires the court to enforce the custody determination if the issuing state's decree was rendered in compliance with the PKPA. 28 U.S.C. § 1738A(a). This Act requires enforcement of custody determinations that are made in conformity with Article 2's jurisdictional rules.

The certified copy, or a copy of the certified copy, of the custody determination entitling the petitioner to the child is prima facie evidence of the issuing court's jurisdiction to enter the order. If the order is one that is entitled to be enforced under Article 2 and if it has been violated, the burden shifts to the respondent to show that the custody determination is not entitled to enforcement.

It is a defense to enforcement that another jurisdiction has issued a custody determination that is required to be enforced under Article 2. An example is when one court has based its original custody determination on the UCCJA § 3(a)(2) (significant connections) and another jurisdiction has rendered an original custody determination based on the UCCJA § 3(a)(1) (home State). When this occurs, Article 2 of this Act, as well as the PKPA, mandate that the home state determination be enforced in all other States, including the State that rendered the significant connections determination.

Lack of notice in accordance with Section 108 by a person entitled to notice and opportunity to be heard at the original custody determination is a defense to enforcement of the custody determination. The scope of the defense under this Act is the same as the defense would be under the law of the State that issued the notice. Thus, if the defense of lack of notice would not be available under local law if the respondent purposely hid from the petitioner, took deliberate steps to avoid service of process or elected not to participate in the initial proceedings, the defense would also not be available under this Act.

There are no other defenses to an enforcement action. If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for the assumption of emergency jurisdiction under Section 204 of this Act. Upon the finding of an emergency, the court issues a temporary order and directs the parties to proceed either in the court that is exercising continuing jurisdiction over

the custody proceeding under Section 202, or the court that would have jurisdiction to modify the custody determination under Section 203.

The court shall determine at the hearing whether fees should be awarded under Section 312. If so, it should order them paid. The court may determine if additional relief is appropriate, including requesting law enforcement officers to assist the petitioner in the enforcement of the order. The court may set a hearing to determine whether further relief should be granted.

The remainder of this section is derived from UIFSA § 316 with regard to the privilege of self-incrimination, spousal privileges, and immunities. It is included to keep parallel the procedures for child support and child custody proceedings to the extent possible.

822.41 no caps
SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD. (m 9)

B { (a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

B { (b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b). S. 822.38(2)

B { (c) A warrant to take physical custody of a child must:

shall do all of the following

- ^a
(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based; ^(c)
- ^b
(2) direct law enforcement officers to take physical custody of the child immediately; and ^(d)
- ^c
(3) provide for the placement of the child pending final relief; ^(e)
- ⁴
^B { (d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.
- ⁵
^B { (e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
- ⁶
^B { (f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Comment

The section provides a remedy for emergency situations where there is a reason to believe that the child will suffer imminent, serious physical harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement proceeding. If the court finds such harm exists, it should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings.

The term "harm" cannot be totally defined and, as in the issuance of temporary restraining orders, the appropriate issuance of a warrant is left to the circumstances of the case. Those circumstances include cases where the respondent is the subject of a criminal proceeding as well as situations where the respondent is

secreting the child in violation of a court order, abusing the child, a flight risk and other circumstances that the court concludes make the issuance of notice a danger to the child. The court must hear the testimony of the petitioner or another witness prior to issuing the warrant. The testimony may be heard in person, via telephone, or by any other means acceptable under local law. The court must State the reasons for the issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the State. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour.

The warrant must provide for the placement of the child pending the determination of the enforcement proceeding. Since the issuance of the warrant would not occur absent a risk of serious harm to the child, placement cannot be with the respondent. Normally, the child would be placed with the petitioner. However, if placement with the petitioner is not indicated, the court can order any other appropriate placement authorized under the laws of the court's State. Placement with the petitioner may not be indicated if there is a likelihood that the petitioner also will flee the jurisdiction. Placement with the petitioner may not be practical if the petitioner is proceeding through an attorney and is not present before the court.

This section authorizes the court to utilize whatever means are available under local law to ensure the appearance of the petitioner and child at the enforcement hearing. Such means might include cash bonds, a surrender of a passport, or whatever the court determines is necessary.

822.42
SECTION 312. COSTS, FEES, AND EXPENSES. (m 91)

B 2 (a) The court shall award the prevailing party, including a State, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

2
(b) The court may not assess fees, costs, or expenses against a State unless authorized by law other than this [Act]. *chapter*

Comment

This section is derived from the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). Normally the court will award fees and costs against the non-prevailing party. Included as expenses are the amount of investigation fees incurred by private persons or by public officials as well as the cost of child placement during the proceedings.

The non-prevailing party has the burden of showing that such an award would be clearly inappropriate. Fees and costs may be inappropriate if their payment would cause the parent and child to seek public assistance.

This section implements the policies of Section 8(c) of Pub.L. 96-611 (part of the PKPA) which provides that:

In furtherance of the purposes of section 1738A of title 28, United States Code [this section], as added by subsection (a) of this section, State courts are encouraged to –

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination

The term "prevailing party" is not given a special definition for this Act. Each State will apply its own standard.

Subsection (b) was added to ensure that this section would not apply to the State unless otherwise authorized. The language is taken from UIFSA § 313 (court may assess costs against obligee or support enforcement agency only if allowed by local law). *no caps*

822.43

SECTION 313. RECOGNITION AND ENFORCEMENT. A court of this

State shall accord full faith and credit to an order issued by another State and consistent with this [Act] *that* which enforces a child custody determination by a court *chapter*

of another State unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2, *subch II*.

Comment

The enforcement order, to be effective, must also be enforced by other States. This section requires courts of this State to enforce and not modify enforcement orders issued by other States when made consistently with the provisions of this Act.

822.44
SECTION 314. APPEALS. An appeal may be taken from a final order in a proceeding under this *[article]* in accordance with [expedited appellate procedures] *subchapter* in other civil cases]. Unless the court enters a temporary emergency order under *S. 822.24* Section 204, the enforcing court may not stay an order enforcing a child custody determination pending appeal. *type brackets please*

Comment

The order may be appealed as an expedited civil matter. An enforcement order should not be stayed by the court. Provisions for a stay would defeat the purpose of having a quick enforcement procedure. If there is a risk of serious mistreatment or abuse to the child, a petition to assume emergency jurisdiction must be filed under Section 204. This section leaves intact the possibility of obtaining an extraordinary remedy such as mandamus or prohibition from an appellate court to stay the court's enforcement action. In many States, it is not possible to limit the constitutional authority of appellate courts to issue a stay. However, unless the information before the appellate panel indicates that emergency jurisdiction would be assumed under Section 204, there is no reason to stay the enforcement of the order pending appeal.

822.45
SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL]. *no caps*

(a) (a) In a case arising under this *chapter* [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a *type brackets*

proceeding under this ^{Article} or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there

is: ^{any of the following exists}

- (1) an existing child custody determination
- (2) a request to do so from a court in a pending child custody

proceeding

- (3) a reasonable belief that a criminal statute has been violated, or
- (4) a reasonable belief that the child has been wrongfully removed or

retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A [prosecutor or appropriate public official] acting under this section acts on behalf of the court and may not represent any party.

Comment

Sections 315-317 are derived from the recommendations of the *Obstacles Study* that urge a role for public authorities in civil enforcement of custody and visitation determinations. One of the basic policies behind this approach is that, as is the case with child support, the involvement of public authorities will encourage the parties to abide by the terms of the court order. The prosecutor usually would be the most appropriate public official to exercise authority under this section. However, States may locate the authority described in the section in the most appropriate public office for their governmental structure. The authority could be, for example, the Friend of the Court Office or the Attorney General. If the parties know that prosecutors and law enforcement officers are available to help secure the return of a child, the parties may be deterred from interfering with the exercise of rights established by court order.

The use of public authorities should provide a more effective method of remedying violations of the custody determination. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the prosecutor or other government official as an enforcement agency will help ensure that remedies of this Act can be made available regardless of

income level. In addition, the prosecutor may have resources to draw on that are unavailable to the average litigant.

The role of the public authorities should generally not begin until there is a custody determination that is sought to be enforced. The Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. This Act does not mandate that the public authorities be involved in all cases referred to it. There is only so much time and money available for enforcement proceedings. Therefore, the public authorities eventually will develop guidelines to determine which cases will receive priority.

The use of civil procedures instead of, or in addition to, filing and prosecuting criminal charges enlarges the prosecutor's options and may provide a more economical and less disruptive means of solving problems of criminal abduction and retention. With the use of criminal proceedings alone, the procedure may be inadequate to ensure the return of the child. The civil options would permit the prosecutor to resolve that recurring and often frustrating problem.

A concern was expressed about whether allowing the prosecutor to use civil means as a method of settling a child abduction violated either DR 7-105(A) of the Code of Professional Responsibility or Model Rule of Professional Responsibility 4.4. Both provisions either explicitly or implicitly disapprove of a lawyer threatening criminal action to gain an advantage in a civil case. However, the prohibition relates to threats that are solely to gain an advantage in a civil case. If the prosecutor has a good faith reason for pursuing the criminal action, there is no ethical violation. See *Committee on Legal Ethics v. Printz*, 416 S.E. 2d 720 (W.Va. 1992) (lawyer can threaten to press criminal charges against a client's former employee unless employee made restitution).

It must be emphasized that the public authorities do not become involved in the merits of the case. They are authorized only to locate the child and enforce the custody determination. The public authority is authorized by this section to utilize any civil proceeding to secure the enforcement of the custody determination. In most jurisdictions, that would be a proceeding under this Act. If the prosecutor proceeds pursuant to this Act, the prosecutor is subject to its provisions. There is nothing in this Act that would prevent a State from authorizing the prosecutor or other public official to use additional remedies beyond those provided in this Act.

The public authority does not represent any party to the custody determination. It acts as a "friend of the court." Its role is to ensure that the custody determination is enforced.

Sections 315-317 are limited to cases covered by this Act, i.e. interstate cases. However, States may, if they wish, extend this part of the Act to intrastate cases.

It should also be noted that the provisions of this section relate to the civil enforcement of child custody determinations. Nothing in this section is meant to detract from the ability of the prosecutor to use criminal provisions in child abduction cases.

822.46
SECTION 316. ROLE OF [LAW ENFORCEMENT]. At the request of a [prosecutor or other appropriate public official] acting under *s. 822.45* **Section 315**, a [law enforcement officer] may take any lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under *s. 822.45* **Section 315**.

Comment

This section authorizes law enforcement officials to assist in locating a child and enforcing a custody determination when requested to do so by the public authorities. It is to be read as an enabling provision. Whether law enforcement officials have discretion in responding to a request by the prosecutor or other public official is a matter of local law.

822.47
SECTION 317. COSTS AND EXPENSES. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under *s. 822.45 or 822.46* **Section 315 or 316**.

Comment

One of the major problems of utilizing public officials to locate children and enforce custody and visitation determinations is cost. This section authorizes the prosecutor and law enforcement to recover costs against the non-prevailing party. The use of the term "direct" indicates that overhead is not a recoverable cost. This section cannot be used to recover the value of the time spent by the public authorities' attorneys.



State of Wisconsin
2003 - 2004 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

the Uniform Child
Custody Jurisdiction
and Enforcement
Act

Regen
1 AN ACT to repeal and recreate chapter 822 of the statutes; relating to: ???

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

INS 1-2
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter 822 of the statutes is repealed and recreated to read:

CHAPTER 822

UNIFORM CHILD CUSTODY

JURISDICTION AND ENFORCEMENT

ACT

SUBCHAPTER I

GENERAL PROVISIONS

822.01 Short title; purposes; construction of provisions. (1) This

chapter may be cited as the "Uniform Child Custody Jurisdiction and Enforcement

Act."

(2) The general purposes of this chapter are to:

(a) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody that have in the past resulted in the shifting of children from state to state with harmful effects on their well-being. ✓

(b) Promote cooperation with the courts of other states to the end that a custody decree is rendered in ~~that~~ ^{the} state that can best decide the case in the interest of the child.

(c) Discourage the use of the interstate [✓] system for continuing controversies over child custody.

(d) Deter abductions of children.

(e) Avoid relitigation of custody decisions of other states in this state. ✓

(f) Facilitate the enforcement of custody decrees of other states.

822.02 Definitions. In this chapter: ✓

(1) “Abandoned” means left without provision for reasonable and necessary care or supervision.

(2) “Child” means an individual who has not attained 18 [✓] years of age.

(3) “Child custody determination” means a judgement, decree, or other order of a court providing for ^ethe legal custody, physical custody, or visitation with respect to a child. The [✓]term includes a permanent, temporary, initial, and modification order.

The term does not include an order relating to child support or other monetary obligation of an individual. ^{physical placement, ✓}

(4) “Child custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, ^{legal}separation, neglect, abuse, [✓]dependancy, ^eguardianship, paternity, termination of parental rights, and protection from domestic violence, in

1 which the issue may appear. "Child custody proceeding"✓ does not include a
2 proceeding involving juvenile delinquency, contractual emancipation, or
3 enforcement under subch. 35 III

4 (5) "Commencement" means the filing of the first pleading in a proceeding.

5 (6) "Court" means an entity authorized under the law of a state to establish,
6 enforce, or modify a child custody determination.✓

7 (7) "Home state" means the state in which a child lived with a parent or a
8 person acting as a parent✓ for at least 6 consecutive months immediately before the
9 commencement✓ of a child custody proceeding.✓ In the case of a child less than 6
10 months of age, the term means the state in which the child lived from birth with any
11 of the persons mentioned in this subsection.✓ A period of temporary absence of any
12 of the mentioned persons in this subsection is part of the period.

13 (8) "Initial determination"✓ means the first child custody determination
14 concerning a particular child.

15 (9) "Issuing court" means the court that makes a child custody determination
16 for which enforcement is sought under this chapter.✓

17 (10) "Issuing state" means the state in which a child custody determination is
18 made.

19 (11) "Modification" means a child custody determination that changes,
20 replaces, supersedes,✓ or is otherwise made after a previous determination
21 concerning the same child, whether or not it is made by the court✓ that made the
22 previous determination.

23 (12) "Person" means an individual, corporation, business trust, estate, trust,
24 partnership, limited liability company, association, joint venture, or government;

governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, to whom all of the following apply:

(a) He or she has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding.

(b) He or she has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

822.03 Proceedings governed by other law. This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

822.04 Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 USC 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as if it were a state for the purpose of applying subchs. I and II.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under subch. III.

822.05 International application. (1) A court of this state shall treat a foreign country as if it were a state for the purpose of applying ^{this subchapter and} subch. ~~II~~ II.

(2) Except as ~~otherwise~~ ^{otherwise} provided in sub. (3), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under subch. III.

(3) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

822.06 Effect of child custody determination. A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with s. 822.08 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent ^{that} the determination is modified.

822.07 Priority. If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, ^{shall} must be given priority on the calendar and handled expeditiously.

822.08 Notice to persons outside state. (1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a ^{manner} prescribed

^{NO} by the law of this state for service of process or by the law of the state in which ^{the} service is made. Notice

shall be given in a ✓

1 manner reasonably calculated to give actual notice but may be by publication if other
2 means are not effective.

3 (2) Proof of service may be made in the manner prescribed by law of this state
4 or by the law of the state in which the service is made. ✓

5 (3) Notice is not required for the exercise of jurisdiction with respect to a person
6 who submits to the jurisdiction of the court.

7 **822.09 Appearance and limited immunity.** (1) A party to a child custody
8 proceeding, including a modification proceeding, or a petitioner or respondent in a ✓
9 proceeding to enforce or register a child custody determination, is not subject to
10 personal jurisdiction in this state for another proceeding or purpose solely by reason
11 of having participated, or of having been physically present for the purpose of
12 participating, in the proceeding.

13 (2) A person who is subject to personal jurisdiction in this state on a basis other
14 than physical presence is not immune from service of process in this state. A party
15 present in this state who is subject to the jurisdiction of another state is not immune
16 from service of process allowable under the laws of that state.

17 (3) The immunity granted by sub. (1) ✓ does not extend to civil litigation based
18 on acts unrelated to the participation in a proceeding under this chapter ✓ committed
19 by an individual while present in this state.

20 **822.10 Communication between courts.** (1) In this section, "record" ✓
21 means information that is inscribed on a tangible medium or that is stored in ~~a~~ ^{an}
22 electronic or other medium and is retrievable in perceivable form.

23 (2) A court of this state may communicate with a court in another state
24 concerning a proceeding arising under this chapter. ✓

1 (3) The court may allow the parties to participate in the communication. If the
2 parties are not able to participate in the communication, they shall be given the
3 opportunity to present facts and legal arguments before a decision on jurisdiction is
4 made.

5 (4) Communication between courts on schedules, calendars, court records, and
6 similar matters may occur without informing the parties. A record need not be made
7 of the communication.

8 (5) Except as ~~otherwise~~ provided in sub. (4),[✓] a record shall be made of a
9 communication under this section.[✓] The parties shall be informed promptly of the
10 communication and granted access to the record.

11 **822.11 Taking testimony in another state.** (1) In addition to other
12 procedures available to a party, a party to a child custody proceeding may offer
13 testimony of witnesses who are [✓]locate^d in another state, including testimony of the
14 parties and the child, by deposition or other means allowable in this state for
15 testimony taken in another state. The court on its own motion may order that the
16 testimony of a person be taken in another state and may prescribe the manner in
17 which and the terms upon which the testimony is taken.

18 (2) A court of this state may permit an individual residing in another state to
19 be deposed or to testify by telephone, audiovisual[✓] means, or other electronic means
20 before a designated court or at another location in that state. A court of this state
21 shall cooperate with courts of other states in designating an appropriate location for
22 the deposition or testimony.

23 (3) Documentary evidence transmitted from another state to a court of this
24 state by technological means that do not produce an original writing may not be
25 excluded from evidence on an objection based on the means of transmission.

SECTION 1

822.12 Cooperation between courts; preservation of records. (1) A court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing.

(b) Order a person to produce or give evidence under procedures of that state.

(c) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.

(d) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request.

(e) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in sub. (1). ✓

(3) Travel and other necessary and reasonable expenses incurred under sub. (1) and (2) may be assessed against the parties according to the law of this state.

(4) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

SUBCHAPTER II

JURISDICTION ✓

1

822.21 Initial child custody jurisdiction. (1) Except as ~~otherwise~~ provided

2

in s. 822.24, a court of this state has jurisdiction to make an initial child custody determination only if any of the following applies:

3

4

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

7

8

(b) A court of another state does not have jurisdiction under par. (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under s. 822.27 or 822.28, and all of the following apply:

10

11

12

1. The child and the child's parents, or the child and at least one parent or a person acting as ^aparent, have a significant connection with this state other than mere physical presence.

13

14

15

2. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

16

17

(c) All courts having jurisdiction under par. (a) or (b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under s. 822.27 or 822.28.

18

19

20

(d) No court of any other state would have jurisdiction under the criteria specified in par. (a), (b), or (c).

21

22

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

23

24

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

25

1 **822.22 Exclusive, continuing jurisdiction.** (1) Except as ~~otherwise~~
2 provided in s. 822.24, a court of this state that has made a child custody
3 determination consistent with s. 822.21 or 822.23 has exclusive, continuing
4 jurisdiction over the determination until ^{any} ~~one~~ of the following ~~happens~~: ^{occurs}

5 (a) A court of this state determines that neither the child, nor the child and one
6 parent, nor the child and a person acting as a parent have a significant connection
7 with this state and that substantial evidence is no longer available in this state
8 concerning the child's care, protection, training, and personal relationships.

9 (b) A court of this state or a court of another state determines that the child,
10 the child's parents, and ^{all} ~~any~~ person acting as a parent do not presently reside in this
11 state.

12 (2) A court of this state that has made a child custody determination and ^{that} does
13 not have exclusive, continuing jurisdiction under this section may modify that
14 determination only if it has jurisdiction to make an initial determination under s.
15 822.21.

16 **822.23 Jurisdiction to modify determination.** Except as ~~otherwise~~
17 provided in s. 822.24, a court of this state may not modify a child custody
18 determination made by a court of another state unless a court of this state has
19 jurisdiction to make an initial determination under s. 822.21 (1) (a) or (b) and one of
20 the following applies:

21 (1) The court of the other state determines ^{that} it no longer has exclusive,
22 continuing jurisdiction under s. 822.22 or that a court of this state would be a more
23 convenient forum under s. 822.27.

all
(2) A court of this state or a court of the other state determines that the child,
the child's parents, and any person acting as a parent do not presently reside in the
other state.

822.24 Temporary emergency jurisdiction. (1) A court of this state has
temporary emergency jurisdiction if the child is present in this state and the child
has been abandoned or it is necessary in an emergency to protect the child because
the child, or a sibling or parent of the child, is subjected to or threatened with
mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be
enforced under this chapter and a child custody proceeding has not been commenced
in a court of state having jurisdiction under ss. 822.21 to 822.23, a child custody
determination made under this section remains in effect until an order is obtained
from a court of a state having jurisdiction under ss. 822.21 to 822.23. If a child
custody proceeding has not been or is not commenced in a court of a state having
jurisdiction under ss. 822.21 to 822.23, a child custody determination made under this
section becomes a final determination, if it so provides and this state becomes the
home state of the child.

(3) If a previous child custody determination is entitled to be enforced under
this chapter, or a child custody proceeding has been commenced in a court of a state
having jurisdiction under ss. 822.21 to 822.23, any order issued by a court of this state
under this section shall specify in the order a period that the court considers
adequate to allow the person seeking an order to obtain an order from the state
having jurisdiction under ss. 822.21 to 822.23. The order issued in this state remains
in effect until an order is obtained from the other state within the period specified
or the period expires.

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or ^{that} a child custody determination has been made by, a court of a state having jurisdiction under ss. 822.21 to 822.23, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction under ss. 822.21 to 822.23, upon being informed that a child custody proceeding has been commenced in, or ^{that} a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

822.25 Notice; opportunity to be heard; joinder. (1) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of s. 822.18 shall be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(2) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

822.26 Simultaneous proceedings. (1) Except as provided in s. 822.24, a court of this state may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction

1 substantially in conformity with this chapter, unless the proceeding has been
2 terminated or is stayed by the court of the other state because a court of this state
3 is a more convenient forum under s. 822.27.✓

4 (2) Except as ~~otherwise~~ provided in s. 822.24, a court of this state, before ✓
5 hearing a child custody proceeding, shall examine the court documents and other ✓
6 information supplied by the parties under s. 822.29. If the court determines that a ✓
7 child custody proceeding has been commenced in a court in another state having
8 jurisdiction substantially in accordance with this chapter, the court of this state shall
9 stay its proceeding and communicate with the court of the other state. If the court
10 of the state having jurisdiction substantially in accordance with this chapter does not
11 determine that the court of this state is a more appropriate forum, the court of this
12 state shall dismiss the proceeding.

13 (3) In a proceeding to modify a child custody determination, a court of this state
14 shall determine whether a proceeding to enforce the determination has been
15 commenced in another state. If a proceeding to enforce a child custody determination
16 has been commenced in another state, the court may do✓any of the following:

17 (a) Stay the proceeding for modification pending the entry of an order of a court
18 of the other state enforcing, staying, denying, or dismissing the proceeding for
19 enforcement.

20 (b) Enjoin the parties from continuing with the proceeding for enforcement.

21 (c) Proceed with the modification under conditions it considers appropriate.

22 **822.27 Inconvenient forum.** (1) A court of this state that has jurisdiction
23 under this chapter to make a child custody determination may decline to exercise its
24 jurisdiction at any time if it determines that it is an inconvenient forum under the
25 circumstances and that a court of another state is a more appropriate forum. The

SECTION 1

1 issue of inconvenient forum may be raised upon^{the} motion of a party, the court's own
2 motion,^{the} or request of another court. ✓

3 (2) Before determining whether it is an inconvenient forum, a court of this state
4 shall consider whether it is appropriate for a court of another state to exercise
5 jurisdiction. For this purpose, the court shall allow the parties to submit information
6 and shall consider all relevant factors, including[✓] all of the following:

7 (a) Whether domestic violence has occurred and is likely to continue in the
8 future and which state could best protect the parties and the child.

9 (b) The length of time^{that} the child has resided outside this state. ✓

10 (c) The distance between the court in this state and the court in the state that
11 would assume jurisdiction.

12 (d) The relative financial circumstances of the parties.

13 (e) Any agreement of the parties as to which state should assume jurisdiction.

14 (f) The nature and location of the evidence required to resolve the pending
15 litigation, including testimony of the child.

16 (g) The ability of the court of each state to decide the issue expeditiously and
17 the procedures necessary to present the evidence.

18 (h) The familiarity of the court of each state with the facts and issues in the
19 pending litigation.

20 (3) If a court of this state determines that it is an inconvenient forum and that
21 a court of another state is a more appropriate forum, the court shall stay the
22 proceedings upon condition that a child custody proceeding be promptly commenced
23 in another designated state and may impose any other condition^{that} the court considers
24 just and proper.

(4) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

822.28 Jurisdiction declined by reason of conduct. (1) Except as ~~otherwise~~ provided in s. 822.24, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless ~~one~~ ^{any} of the following occurs:

(a) The parents and all person acting as parents have acquiesced in the exercise of jurisdiction.

(b) A court of the state otherwise having jurisdiction under ss. 822.21 to 822.23 determines that this state is a more appropriate forum under s. 822.27.

(c) No court of any other state would have jurisdiction under the criteria specified in ss. 822.21 to 822.23.

(2) If a court of this state declines to exercise its jurisdiction under sub. (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under ss. 822.21 to 822.23.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction under sub. (1), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party

expenses for

1 from whom fees are sought establishes that the assessment would be clearly
2 inappropriate. The court may not assess fees, costs, or expenses against this state
3 unless authorized by law other than this chapter. ✓

4 **822.29 Information to be submitted to court.** (1) ~~Subject to local law~~ ✓
5 ~~providing for the confidentiality of procedures, addresses, and other identifying~~
6 ~~information], in~~ ~~[In]~~ ✓ a child custody proceeding, each party, in its first pleading or
7 in an attached affidavit, shall give information, if reasonably ascertainable, under
8 oath as to the child's present address or whereabouts, the places where the child has
9 lived during the last 5 years, ✓ and the names and present addresses of the persons
10 with whom the child has lived during that period. The pleading or affidavit ~~must~~ ^{shall}
11 state whether the party:

12 (a) Has participated, as a party or witness or in any other capacity, in any other
13 proceeding concerning the custody of or ^{physical placement or} visitation with the child and, if so, ^{shall} identify
14 the court, the case number, and the date of the child custody determination, if any. ✓

15 (b) Knows of any proceeding that could affect the current proceeding, including
16 proceedings for enforcement and proceedings relating to domestic violence,
17 protective orders, termination of parental rights, and adoptions and, ^{shall} if so, identify
18 the court, the case number, and the nature of the proceeding. ✓ ^{if}

19 (c) Knows the names and addresses of any person not a party to the proceeding
20 who has physical custody of the child or claims rights of legal custody or physical
21 custody of, or ^{physical placement or} visitation with, the child and, ^{if} is so, the names and addresses of those
22 persons. ✓

23 (2) If the information required by sub. (1) is not furnished, the court, upon
24 motion of a party or its own motion, may stay the proceeding until the information
25 is furnished.

1 (3) If the declaration as to any of the items described in sub. (1) (a) to (c) is in
2 the affirmative, the declarant shall give additional information under oath as
3 required by the court. The court may examine the parties under oath as to details
4 of the information furnished and other matters pertinent to the court's jurisdiction
5 and the disposition of the case.

6 (4) Each party has a continuing duty to inform the court of any proceeding in
7 this or any other state that could affect the current proceeding.

8 (5) If a party alleges in an affidavit or a pleading under oath that the health,
9 safety, or liberty of a party or child would be jeopardized by disclosure of identifying
10 information, the information shall be sealed and may not be disclosed to the other
11 party or the public unless the court orders the disclosure to be made after a hearing
12 in which the court takes into consideration the health, safety, or liberty of the party
13 or child and determines that the disclosure is in the interest of justice.

14 **822.295 Appearance of parties and child.** (1) In a child custody proceeding
15 in this state, the court may order a party to the proceeding who is in this state to
16 appear before the court in person with or without the child. The court may order any
17 person who is in this state and who has physical custody or control of the child to
18 appear in person with the child.

19 (2) If a party to a child custody proceeding whose presence is desired by the
20 court is outside this state, the court may order that a notice given under s. 822.18
21 include a statement directing the party to appear in person with or without the child
22 and informing the party that failure to appear may result in a decision adverse to the
23 party.

24 (3) The court may enter any orders necessary to ensure the safety of the child
25 and of any person ordered to appear under this section.

(1) "judicial day" means ^{and any time a judge is at the} ~~each day except~~ ^{court house} Saturday, Sunday, or a legal holiday

(4) If a party to a child custody proceeding who is outside this state is directed to appear under sub. (2) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

SUBCHAPTER III

ENFORCEMENT

822.31 Definitions. In this subchapter:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

822.32 Enforcement under Hague Convention. Under this subchapter, a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

822.33 Duty to enforce. (1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.